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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,117

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Hung Manh Nguyen

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INVISTA NORTH AMERICA S.A.R.L.
THE LITTLE FALLS CENTRE/1052
2801 CENTERVILLE ROAD
WILMINGTON, DE 19808

EXAMINER

SHEH, ANTHONY H

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

07/10/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/588,117	Applicant(s) NGUYEN, HUNG MANH	
	Examiner ANTHONY H. SHEH	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1 Aug 2006</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Priority

1. Acknowledgement is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). However, it is noted that the specifications recites a benefit claim to US provisional application 60/542,202, and further that the foreign priority claim is to a US nonprovisional application 10/773,490. The instant application should be amended to clear matters of priority and/or benefit.

Specification

2. The disclosure is objected to because of the following informalities:

(a) Page 1: the benefit claim to US provisional application 60/542,202 should be reviewed for the reasons set forth above.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7, 10-20, and 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by TABOR et al. (US 5372885, hereafter '885).

4. '885 discloses a fiber blend comprising bicomponent fibers, and high performance natural and/or synthetic fibers (col. 8, ln. 54-60). The proportion of the two types of fibers depends on the desired application; in general, the bicomponent fibers are employed in an

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amount between 5 and 95 wt.% of the blend (col. 9, ln. 5-6), the balance being the high performance natural and/or synthetic fibers. Examples of natural fibers include cellulose (cotton), modified cellulose (rayon), and wool (col. 5, ln. 7-9). The fiber blend is suitably employed in a batt (col. 8, ln. 44), which is heat-treated to form a fabric.

5. The bicomponent fiber comprises (a) a first component being a high performance thermoplastic such as polyethylene terephthalate (PET) polyester; and (b) a second component which is olefinic, e.g. polyethylene (col. 4, ln. 58-60) and has pendant succinic acid or anhydride groups, i.e. adhesion-promoted (Abstract; superior adhesion - col. 4, ln. 45). The pendant groups are formed via grafting with maleic anhydride (Abstract). A preferred embodiment of (b) is grafted linear polyethylene (col. 6, ln. 44-45); (b) is included in an amount between 0.5 and 99.5 wt.% of the bicomponent fiber, preferably 1 to 50 wt.% (col. 6, ln. 56-57). The bicomponent fiber may further comprise conventional additives/fillers such as dyes, pigments, antioxidants, UV stabilizers, etc. (col. 6, ln. 63-65).

6. Regarding claims 1, 10, 14, and 23, '885 anticipates all limitations of the instant claims for the reasons set forth above, and additionally for the following reasons. The claims recite intended uses such as "for use in a molded article." Since the prior art fiber blend/articles disclose thereof are capable of performing the intended use, the limitations are met.

7. Regarding claims 1, 13, 14, and 25, the claims recite a performance characteristic directed towards the sag. Since the prior art fiber meets all the limitations of the claimed invention in all its chemical and physical aspects, it is reasonable to conclude that it would display these performance characteristics as well, i.e. the sag limitation is inherently met. Since the United States Patent and Trademark Office cannot perform experiments, the burden is shifted to Applicants to establish an unobvious difference. *In re Best*, 562 F.2d 1252, 1255, 195

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USPQ 430, 433 (CCPA 1977). *In re Spada*, F.2d 705 709 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

8. The instant claims further recite the "low melting portion" of the bicomponent fiber, which is met by the prior art in all its chemical aspects via component (b). Since the melting temperature of a resin is a function of its chemical nature, it is reasonably expected that the claimed "low melting" performance is inherently met. For the same reason, the claimed modulus of the polyester fiber is met. The courts have held that "a compound and all its properties are mutually inseparable." *In re Papesch*, 315F.2d 381, 137 USPQ 42, 51 (CCPA 1963). Further, attention is drawn to MPEP 2112.01, which states that "products of identical chemical composition can not have mutually exclusive properties. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present." *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 8, 9, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over TABOR et al. (US 5372885, hereafter '885) as applied to claims 1-7, 10-20, and 22-26 above, and in further view of PITTMAN et al. (US 2003/0194552 A1, hereafter '552).

12. '885 remains as applied above. While the reference teaches the use of fillers, as previously noted, it does not specify what fillers, nor in what amounts.

13. In the same field of endeavor of fiber blends (Abstract; para. [0002]), '552 discloses a fiber blend comprising a bicomponent fiber substantially similar to that of '885 (para. [0012], [0013]), and further an enhancement agent, such as titanium dioxide particles (para. [0022]), in an amount between 0.1 to 1% of the olefin content. Various benefits may be derived from the enhancement agent, such as improves processability and final product quality (para. [0012]).

14. Therefore it would have been obvious to one of ordinary skill in the art to include titanium dioxide, as taught by '552, in the prior art bicomponent fiber of '885 for the aforementioned benefits.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY H. SHEH whose telephone number is (571) 270-7746. The examiner can normally be reached on Mondays through Thursdays, 9:30A-3:30P.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, VASUDEVAN S. JAGANNATHAN can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANTHONY H SHEH/
Examiner, Art Unit 1796

/Vasu Jagannathan/
Supervisory Patent Examiner, Art Unit 1796